

ADVOCATES FOR JUSTICE

A Public Interest Organization



www.advocatesforjustice.net

225 Broadway, Suite 1902
New York, NY 10007

TEL: 212-285-1400
FAX: 212-285-1410

info@advocatesforjustice.net

Elizabeth Turner
Executive Director

Arthur Z. Schwartz, Esq.
Lead Attorney
President, Board of Directors

Laura D. Barbieri, Esq.
Of Counsel

October 11, 2019

By ECF

Hon. Paul A Engelmayer
United States District Court
40 Foley Square
New York, NY 10007

Re: WBAI et al. v. Pacifica Foundation
19-cv-9387

Dear Judge Engelmayer:

This office represents Petitioners.

As is illustrated by an examination of the Notice of Removal, this lawsuit, removed on diversity grounds, involves a challenge to the shutdown of a major New York radio station, WBAI, by the Interim Executive Director of its parent non-profit corporation, Pacifica Foundation. The shutdown occurred at 7 a.m. on October 7, 2019. By 10 p.m. that night, a Temporary Restraining Order was in place ordering an end to the shutdown and setting a hearing on permanent relief (it was an Article 78 CPLR Petition) for October 18, 2019. Pacifica did not comply. We filed an Order to Show Cause to hold them in contempt.

Two days later, Pacifica appeared in the Appellate Division First Department to move to vacate the TRO. While we were there, without telling our side, Pacifica's counsel filed a Notice of Removal on diversity grounds. It is not clear whether the Appellate Division order modifying the TRO was issued before or after the New York courts were divested of jurisdiction.

Nevertheless, it is fair to say that:

- a. Pacifica has not obeyed even the modified TRO.
- b. The exigent circumstances which necessitated a rapid hearing still exist.

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c. Pacifica's counsel thinks that by removing the proceeding, the TRO and Order to Show Cause setting on October 18, 2019 hearing is meaningless; we do not agree.

Removal should never be allowed to serve as a means to avoid compliance with a State Court order, nor should it serve to stop the scheduling of an expedited hearing seeking relief. See 28 U.S.C. § 1450.

We request, therefore that this Court preserve the October 18, 2019 hearing date and convert it into a hearing on a Preliminary Injunction. We also will submit an Order to Show Cause for Contempt of the State Court Order, which we will ask to be heard on that date.

This matter is urgent; it involves the content of what is being broadcast on a radio station. We request that it be moved along quickly.

Respectfully submitted,

/s/ Arthur Z. Schwartz

Arthur Z. Schwartz

AZS:dr

cc: Kara Marie Steger, Esq. (by ECF)